

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

American Mobile)
Telecommunications Association, Inc.'s)
Petition for Rulemaking)
to Expand Geographic Partitioning)
and Spectrum Disaggregation)
Provisions for 900 MHz SMR)

RM-8887

and)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

DOCKET FILE COPY ORIGINAL

PR Docket No. 93-144

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To: The Commission

COMMENTS OF FISHER COMMUNICATIONS, INC.

Pursuant to the Public Notice released by the Federal Communications Commission ("FCC" or "Commission") on October 4, 1996 in the above-captioned proceeding,¹ and pursuant to Section 1.405 of the Commission's rules,² Fisher Communications, Inc. ("Fisher" or "the Company"), hereby submits these comments in support of the American Mobile Telecommunications Association, Inc.'s ("AMTA" or "Association") Petition for Rulemaking to expand geographic partitioning and spectrum disaggregation provisions for 900 MHz

¹ See, Public Comment Invited, American Mobile Telecommunications Association, Inc. Files Petition for Rulemaking to Expand Geographic Partitioning and Spectrum Disaggregation Provisions for 900 MHz SMR, Public Notice, DA 96-1654, 11 FCC Rcd ____ (rel. Oct. 4, 1996).

² 47 C.F.R. § 1.405(a).

Specialized Mobile Radio ("SMR"). As discussed herein, Fisher supports AMTA's proposal to permit immediate and liberal 900 MHz geographic partitioning and spectrum disaggregation.

I. Introduction

1. Fisher has been an analog SMR service provider for 12 years, providing SMR service to thousands of end-users in the Southern California, Western Arizona and Southern Nevada market areas. The Company has invested many hundreds of thousands of dollars in equipment and operations in order to reliably deliver its services. Fisher is the licensee of many 800 MHz channels in both the 860-865 MHz band, proposed for wide-area licensing, and the 850 MHz band proposed for use in local service areas.

2. Fisher is also the incumbent licensee on frequency block A in the San Diego Designated Filing Area ("DFA"). In an effort to protect its licensed service area and to acquire additional spectrum, Fisher participated in the 900 MHz auction. Fisher submitted its \$435,000 upfront payment and bid on its frequency block and others in the Los Angeles-San Diego Major Trading Area ("MTA"). However, Fisher withdrew from the auction in round 103 due to the continued escalation in bid prices that the company found to be beyond its means.

3. Fisher has reviewed and considered the Petition for Rulemaking filed by AMTA to modify the 900 MHz SMR rules to expand the geographic partitioning provisions to include all 900 MHz MTA licenses and to permit spectrum disaggregation. With minor modification, Fisher believes the Association has proposed a reasonable and fair approach that will foster additional opportunities for businesses in the 900 MHz spectrum.

II. AMTA's Proposals Will Create Valuable Additional Opportunities for Participation in the 900 MHz SMR Service.

4. AMTA's proposed changes will provide MTA licensees the ability to refine their business plans to reflect advances in technology and changing market conditions. They will also encourage efficiency by providing MTA licensees with a way to divest themselves of geographic area and spectrum that may be more efficiently and profitably used by another entity while simultaneously allowing incumbent licensees, like Fisher, to acquire additional increments of spectrum and geographic area that their technology and customers may require. In addition, the proposal is consistent with the Commission's overall goals of reducing regulatory burdens on telecommunications carriers, providing for more flexible regulation of commercial mobile radio services ("CMRS"), and allowing market forces, rather than regulatory restrictions, to more effectively determine the development and most efficient use of limited radio spectrum.

5. By expanding the partitioning and disaggregation rules, the Commission will provide 900 MHz licensees with greater flexibility to use their spectrum to develop niche markets and innovative wireless service offerings. If adopted, the proposed amendments to the Commission's rules will foster competition in the wireless marketplace by providing more licenses and licensees per service area, and will allow smaller entities who were foreclosed from the auction with another opportunity to obtain a 900 MHz license.

III. The Specific Rule Changes to Implement Partitioning and Disaggregation Should Allow Parties the Maximum Amount of Flexibility.

6. Fisher urges the Commission to implement the rule changes proposed by AMTA in a manner which gives 900 MHz MTA licensees, as well as prospective partitionees and disaggregates, immediate flexibility. The Commission should allow market forces and

technology to determine the optimal configuration of 900 MHz licenses by allowing parties to determine in the course of negotiations the size of the geographic area to be partitioned and the amount of spectrum to be disaggregated.

A. The Commission Should Not Require Geographic Partitioning to Follow County Boundaries or Limit the Total Area that May Be Partitioned.

7. AMTA proposes that the 900 MHz rules be amended to allow any MTA licensee to partition its license any time after receiving an authorization without imposition of a holding period. Any party that meets the eligibility requirements to be a 900 MHz SMR licensee would be permitted to acquire an authorization for a partitioned geographic service area. The Association further suggests that a partitioned area would be defined by established geopolitical boundaries, such as, but not limited to, county lines. Where the desired service area does not conform to existing geopolitical lines, parties would be free to seek a waiver of this requirement. MTA licensees would not be required to retain any particular percentage of the MTA authorization.

8. Fisher agrees that no holding period should be imposed on 900 MHz MTA licensees and that any party eligible to hold an 900 MHz SMR authorization be permitted to acquire partitioned or disaggregated license. However, Fisher submits that AMTA's delineation of the size of the geographic area to be partitioned is too restrictive. While AMTA recognizes that service areas will not always fall naturally along county lines,³ it still limits the area to be partitioned to be along existing geopolitical areas. Although the Association proposes to allow

³ For example, in many geographically large counties, populations are clustered in a relatively small portion of the county. In these instances, it may not be economically desirable to partition the entire county.

waiver requests in those circumstances where the area to be partitioned is not along an established geopolitical area, such a process merely introduces further delay and uncertainty into the partitioning process. Fisher submits that a better approach would be to permit any geographic boundary line to be drawn so long as the parties file with their applications a detailed map of the proposed partition. This approach would provide greater flexibility for licensees and would allow the market, rather than regulation, to drive the build-out of 900 MHz SMR.

B. Licensees Should be Allowed to Disaggregate Any Portions of Spectrum Agreed to by the Parties.

9. Fisher agrees with AMTA that setting a minimum amount of spectrum to be disaggregated is too restrictive, as some services may not require paired frequencies. Therefore, Fisher supports AMTA's proposal that to avoid inadvertent bias in favor of certain technologies, licensees should be allowed to disaggregate any portions of spectrum agreed to by the parties.

C. The Commission Should Allow Partitioning and Disaggregation in Combination.

10. AMTA recommends that licensees should be permitted to use both the partitioning and disaggregation rules in combination to enter or increase their presence in a market or to expand or enhance service offerings. Fisher agrees that the Commission should allow entities to acquire partitioned and disaggregated spectrum in the same market. Allowing both will give entities added flexibility in meeting wireless spectrum needs in each market.

IV. Construction

11. Fisher supports AMTA's proposals with respect to the construction obligation for disaggregated spectrum and partitioned geographic area. Fisher agrees that the proposed measures would ensure that disaggregates and partitionees do not warehouse the acquired

spectrum and that the spectrum would be used in a manner that will benefit the public. In particular, Fisher supports AMTA's recommendation that the construction obligations of the MTA licensee and the partitionee/disaggragatee are not linked. This proposal recognizes that entities acquiring disaggregated spectrum or partitioned geographic area have no control over the actions of the entity dividing its license and properly places the sole responsibility for meeting the build-out requirements on each licensee.

V. Related Matters.

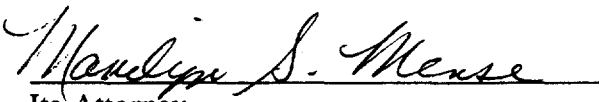
12. In addition to the issues outlined above, AMTA's Petition proposes that the FCC follow existing assignment procedures in reviewing requests for partitioning, disaggregation or both. Fisher agrees that current procedures and FCC forms are sufficient for handling the filing requirements created by partitioning and disaggregating. In order to keep the administrative burden on carriers as simple and streamlined as possible, the FCC should refrain from adopting any additional requirements.

VI. Conclusion

13. Fisher strongly supports AMTA's proposal to expand the Commission's partitioning and disaggregation rules to include all 900 MHz MTA licensees. With the few modifications suggested herein, Fisher urges the Commission to adopt AMTA's proposal expeditiously.

Respectfully submitted,

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Dated: October 21, 1996

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 21st day of October, 1996, mailed a copy of the foregoing Comments to the following:

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